# STATE OF MICHIGAN

# COURT OF APPEALS

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AUTO-OWNERS INSURANCE COMPANY, Subrogee of PINE LAKES VILLAGE, L.L.C., ROBERT ROSZELL, and JONI ROSZELL

Plaintiffs-Appellants,

v

CITY OF NEWAYGO,

Defendant,

and

WM LIMITED PARTNERSHIP 1998, d/b/a WENDY'S RESTAURANT, and LIN DEVELOPMENT, L.L.C., d/b/a ORIENTAL FORREST BUFFET RESTAURANT,

Defendants-Appellees.

UNPUBLISHED
June 22, 2006

No. 267360
Newaygo Circuit Court
LC No. 05-18883-NI

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Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiffs appeal by right from the trial court order granting defendants' motions for summary disposition under MCR 2.116(C)(8).[1] We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In April of 2004, the City of Newaygo's sewage disposal system overflowed, causing sewage to enter twenty-four units of the Pine Lake Village Apartments complex, including the unit rented by plaintiffs Robert and Joni Roszell. The Roszells and Auto-Owners Insurance Company, as subrogor of Pine Lakes Village, L.L.C., filed negligence claims against the city and

[1] The trial court granted summary disposition to the City of Newaygo on the ground that plaintiffs failed to plead facts in avoidance of governmental immunity under MCL 691.1417. MCR 2.116(C)(7) and (8). Plaintiffs do not challenge that ruling in this appeal.

the operators of two nearby restaurants. Plaintiffs alleged that the two restaurateurs, Lin Development, LLC (Lin Development), the owner of the Oriental Forrest Buffet Restaurant and WM Limited Partnership – 1998 (WM Limited), the owner of a Wendy's Restaurant, caused the damage to the apartments and their personal property by negligently failing to clean the grease traps connected to the sewers. The trial court, finding that users of the sewer system do not have a common law or statutory duty of care in regard to other users of the system, granted Lin Development's and WM Limited's motions for summary disposition. The instant appeal followed.

The decision to grant or deny summary disposition presents a question of law that this Court reviews de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A trial court properly grants a motion for summary disposition when the opposing party has failed to state a claim on which relief can be granted. MCR 2.116(C)(8). The motion "may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Maiden, supra* at 119, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163, 483 NW2d 26 (1992).

To state a claim for negligence, a plaintiff must prove: "(1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages." *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 203; 544 NW2d 727 (1996).

Whether a duty exists constitutes a question of law for the court. *Braun v York Properties, Inc*, 230 Mich App 138, 141; 583 NW2d 503 (1998). A duty consists of "a legally recognized obligation to conform to a particular standard of conduct toward another." *Halbrook v Honda Motor Co, Ltd*, 224 Mich App 437, 440-441; 569 NW2d 836 (1997). If the court determines no duty exists, summary disposition is appropriate. *Id*. at 441.

Michigan case law provides no description of the duties owed by a user of a public sewage system to other users of the same system. But defendants persuasively argue that such obligations are analogous to the duties owed by landowners to the users of the public sidewalks adjoining their property.

At common law, property owners owe no duty to repair or maintain an adjoining public sidewalk. *Bivens v Grand Rapids*, 443 Mich 391, 395; 505 NW2d 239 (1993). Rather such obligations arise only when imposed by statute or ordinance. *Id.*; *Levendoski v Geisenhaver*, 375 Mich 225, 227; 134 NW2d 228 (1965). Under the Home Rule Cities Act, municipalities may provide in their charters "[f]or the use, regulation, improvement and control of the surface of its streets, alleys and public ways, and of the space above and beneath them." MCL 117.4h.

Further, city ordinances requiring landowners to keep the adjacent sidewalks free from obstructions, such as ice and snow, do not give rise to a private cause of action against the owners. *Levendoski, supra* 227-228; *Figueroa v Garden City*, 169 Mich App 619, 622-623; 426 NW2d 727 (1988). Rather, such ordinances impose "only a public duty punishable 'in some form of public prosecution, and *not by way of individual recovery of damages.*'" *Bivens*, *supra* at 400 (emphasis in *Bivens*), quoting *Taylor v Lake Shore & MSR & Co*, 45 Mich 74, 77 (Cooley, J.); 7 NW 728 (1881). As our Supreme Court explained in *Taylor*, *supra*, 77-78, the duty to keep

a sidewalk in condition for use, like the duty to build a sidewalk in the first place, constitutes a duty owed to the "whole public of the city" rather than to individual pedestrians.

As with public sidewalks, cities provide municipal sewer systems for the benefit of the general public. MCL 333.12752 states, "Public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state." The Legislature has therefore given municipalities the authority to require that all structures within their borders, in which sewage originates, be connected to a sewer system. MCL 333.12754; *Bingham Farms v Ferris*, 148 Mich App 212, 217-218; 384 NW2d 129 (1986).

Pursuant to this authority, Newaygo adopted Article III of its municipal code concerning sewers and sewage disposal. These ordinances require all businesses within the city limits to connect to the municipal sewage system. Newaygo City Code § 78-104. Users are prohibited from discharging into the system any "solid or viscous substance capable of causing obstruction to the flow of the sewers" or interfering with the "proper operation of the sewage works." Newaygo City Code § 78-143(5). The code further states that the city shall provide "interceptors" where necessary for the proper handling of liquid waste containing excessive amounts of grease. Newaygo City Code § 78-144. But the owners of the businesses must maintain these grease traps at their own expense. *Id.* Violations of these ordinances are punishable by a fine of up to $500 and imprisonment for up to ninety days. Newaygo City Code §§ 1-7, 78-102(b). And any person violating a provision of Article III is also liable to the city for "any expense, loss or damage occasioned to the city by reason of such violation." Newaygo City Code § 78-102(c).

Just as there exists no common law duty to maintain an adjacent sidewalk, defendants in the instant case have no common law duty to prevent a breakdown in the publicly provided sewage system. Nevertheless, under the city code, they have an obligation to prevent the discharge of waste capable of blocking the sewers. And they must properly maintain the grease interceptors provided by the city to prevent such discharges. But like a landowner's obligation to keep the sidewalk clear for pedestrian use, these duties are owed to the public at large. Newaygo's ordinances make it clear that a breach of these duties is only punishable through "some form of public prosecution." Thus, just as a breach of an ordinance requiring landowners to keep their sidewalks clear does not allow a pedestrian to bring suit for an individual injury, breach of the duties created by the sewer ordinances does not give rise to a private cause of action for damages suffered by other users of the sewer system.

Because the sewer ordinances create only a public duty, the trial court did not err in finding that neither WM Limited nor Lin Development owed plaintiffs a duty in regard to their use of the waste disposal system. Consequently, we affirm the trial court order granting defendants' motions for summary disposition under MCR 2.116(C)(8).

We affirm.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Patrick M. Meter